Supreme Court, U.S.
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No. 96-1589

In The

Supreme Court of the United States

October Term, 1996

CARROLL W. COLFORD,

Petitioner,

v.

CHUBB LIFE INSURANCE COMPANY OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The Maine Supreme Judicial Court

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM J. KAYATTA
(*Counsel of Record*)
JARED S. DES ROSIERS
PIERCE ATWOOD
One Monument Square
Portland, ME 04101-1110
Tel: (207) 791-1100

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(6) of the Rules of the Supreme Court of the United States, Respondent Chubb Life Insurance Company of America ("Chubb") states that its current parent company is The Chubb Corporation. Pursuant to a Purchase and Sale Agreement dated February 23, 1997, it is expected that the Jefferson-Pilot Corporation will purchase Chubb in the near future. Chubb has no non-wholly owned subsidiaries.

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STATEMENT OF THE CASE

In this case arising out of a dispute concerning the denial of benefits under a disability insurance policy applied for by Petitioner Carroll W. Colford, Colford received a jury verdict for compensatory and punitive damages against Respondent Chubb Life Insurance Company of America ("Chubb") on a claim for intentional infliction of emotional distress. Relying on settled Maine case law defining the elements of the tort of intentional infliction of emotional distress, the trial court set aside the verdict on the grounds that the evidence, even as viewed most favorably to Colford, did not satisfy the necessary elements of the tort as a matter of Maine law. Thereafter, the Maine Supreme Judicial Court sitting as the Law Court (hereinafter the "Law Court") unanimously affirmed the trial court's entry of a judgment as a matter of law on Colford's intentional infliction claim, thus conclusively taking away Colford's verdict as a matter of Maine law. *See Colford v. Chubb Life Ins. Co. of America*, 687 A.2d 609 (Me. 1996). Unable to accept this application of Maine law, Colford now petitions this Court for a writ of certiorari in an attempt to reinstate his verdict.

Colford's intentional infliction of emotional distress claim arose as part of a dispute he had with Chubb concerning whether he was entitled to disability benefits

under a disability insurance conditional receipt he executed on April 22, 1991. On that date, with his son acting as agent, Colford, a Chubb agent himself, completed an application and a conditional receipt for disability insurance coverage from Chubb. The conditional receipt contained certain conditions that had to be met in order for Chubb to be obligated to provide insurance coverage while the application for permanent coverage was being processed.

Within the next two weeks, Colford reported to a doctor that he had fallen down a flight of stairs on April 30, 1991 and injured his back. While a series of subsequent exams by neurologists showed that Colford was completely normal from a neurological standpoint, he nevertheless continued to report pain involving his cervical and lumbar spine. Colford did not immediately report his injury to Chubb. In the meantime, Chubb, completely unaware of Colford's injury, determined that Colford did not satisfy all of the conditions included in the conditional receipt and instead on May 20, 1991 offered Colford a different policy for which he would qualify.

Fifteen days later, on June 4, 1991, Chubb received from Colford its first notice of the April 30 injury. On June 6, 1991, now informed of the back injury, Chubb withdrew its May 20 offer of the other coverage, which Colford had not yet accepted. Four days later, on June 10, Colford wrote Chubb purporting to accept Chubb's May 20 offer. On the same day, Chubb denied Colford's claim for the April 20 injury due to lack of coverage.

Thereafter, Colford filed suit alleging breach of contract and several tort claims against Chubb. Three claims

went to trial: a breach of contract claim for failure to pay disability insurance; a claim for intentional infliction of emotional distress and a claim for negligent infliction of emotional distress.[1] With the agreement of the parties, the trial court retained for itself the issue of interpreting the conditional receipt. All other claims were tried to the jury.

Colford based his claim for intentional infliction of emotional distress on certain conduct by Chubb in handling and investigating his disability claim. Specifically, he offered evidence that: Chubb wrongly denied his disability claim; Chubb sent him to a board certified neurologist for an independent medical exam who, according to Colford, was sarcastic, rude and indifferent to his personal comfort; Chubb's defense attorney attended a worker's compensation hearing on Colford's worker's compensation claim and passed notes to the attorney representing the worker's compensation insurer; Chubb Securities informed the SEC that Colford voluntarily terminated his brokerage license; and Chubb, after initially granting a waiver but later learning that a doctor found him not totally disabled, stopped Colford's disability premium waiver on his life insurance policy. Colford argued that this conduct on Chubb's part met the established standard for the tort of intentional infliction of emotional distress under Maine law, i.e., that the tortfeasor's conduct be "so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and . . . be regarded as

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[1] The trial court entered judgment as a matter of law on Colford's negligent infliction claim. Colford did not appeal this ruling below.

'atrocious and utterly intolerable in a civilized community.'" *Vicnire v. Ford Motor Credit Co.*, 401 A.2d 148, 154 (Me. 1987) (quoting *Restatement (Second) of Torts*, § 46, cmt. d).

At the conclusion of the evidence, the trial court informed counsel that it intended to rule in favor of Colford on the conditional receipt issue. Prior to the case going to the jury, Chubb renewed its pretrial argument that, as a matter of law, there was no basis for the tort claim of intentional infliction of emotional distress, and thus no basis as well for punitive damages. Although expressing considerable doubt that Colford had produced evidence of intentional infliction of emotional distress, the trial court denied the motion and let the tort claim go to the jury subject to Chubb's right to renew its motion post-verdict should the jury decide in favor of Colford.

The jury found that Chubb was guilty of intentional infliction of emotional distress and awarded Colford $500,000 in compensatory damages. The jury also found that Chubb had acted with malice, the requirement under Maine law for the awarding of punitive damages. The trial then reconvened on the issue of punitive damages. After hearing evidence of Chubb's financial condition, the jury awarded Colford punitive damages totaling $24,002,000.

After rejecting a timely motion for judgment as a matter of law on the conditional receipt issue, the trial court on October 4, 1994 entered judgment for Colford in the amount of $1,465,356 on the conditional receipt issue. Appendix ("A.") 38a. At the same time, the trial court entered judgment for Colford on the intentional infliction

claim in the amount of $500,000 compensatory damages, and $24,002,000 punitive damages, plus interest and costs. A. 38a. The trial court in its Judgment reiterated its "substantial concern about the sufficiency of the evidence to support a finding of intentional infliction of emotional distress." A. 36a-37a. The trial court also made clear Chubb's right to file a motion for judgment as a matter of law within ten days of the entry of judgment on this issue. A. 38a.

Chubb in a timely fashion exercised that right and filed a motion for judgment as a matter of law. After carefully considering the evidence Colford presented at trial concerning Chubb's alleged tortious acts, the trial court issued an Opinion and Order granting in part Chubb's motion, finding that, under established Maine common law principles, Chubb's "conduct does not rise to the level of actionable conduct for the infliction of emotional distress" and that, therefore, there was insufficient evidence to support the verdict in favor of Colford on his intentional infliction claim. As a result, the trial court set aside the compensatory and punitive damages award on this tort claim. Thereafter, Chubb timely appealed the judgment on the breach of contract issue and Colford cross-appealed on the tort issue.

On appeal, the Law Court reversed the trial court on the breach of contract claim, finding that Colford had not satisfied the conditions precedent to coverage under the conditional receipt. The Law Court at the same time affirmed the trial court's judgment as a matter of Maine law on Colford's intentional infliction claim. After considering the evidence presented as to each of the acts on

Chubb's part that Colford argued were tortious, the Law Court stated:

> [Colford] must demonstrate that Chubb's actions arose independently of its denial of the disability claim, were intentionally or recklessly inflicted, and were so 'extreme and outrageous' as to exceed 'all possible bounds of decency,' and be regarded as 'atrocious' and utterly intolerable in our civilized society. *Vicnire*, 401 A.2d at 154. This attitude and conduct of the physician who examined Colford, on this record, cannot be attributed to Chubb. Chubb's attorney's attendance at the workers' compensation hearing and communication with one of the attorneys for the employer's insurer does not constitute the kind of conduct that supports a cause of action in tort for intentional infliction of emotional distress. Neither do Chubb's actions concerning Colford's securities registration and Colford's life insurance premiums rise to the level of extreme and outrageous, or exceed all possible bounds of decency. Nor do they support a verdict of punitive damages.

Colford, 687 A.2d at 617.

Colford now petitions this Court for a writ of certiorari to review this decision by Maine's highest court that Colford's evidence did not satisfy the requirements of the tort of intentional infliction of emotional distress under the common law of the State of Maine.

REASONS TO DENY THE PETITION

In his Petition, Colford invokes jurisdiction under 28 U.S.C. § 1254(1). This provision concerns jurisdiction on appeals from the courts of appeals. Colford must instead have in mind section 1257, which provides jurisdiction to review the final judgment rendered by the highest state court in cases where the validity of a federal treaty or statute is questioned, where a state statute is repugnant to the federal Constitution, treaty or law or where "any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of . . . the United States." *See* 28 U.S.C. § 1257(a). Given the total absence of a federal claim by Colford, this Court would appear to have no jurisdiction under this statute.

Colford asserts no "title, right, privilege or immunity" under the Constitution or laws of the United States. Instead, he asks this Court to do what it cannot do: review a decision by Maine's highest court ruling that the evidence Colford presented failed to support the state law claim he brought. The fact that the state law decision rejecting Colford's state law claim avoided the need to address an alternative constitutional defense raised by Chubb is simply irrelevant to the adequacy of the Petition, and provides no basis for jurisdiction.

I. This Case Is Simply A Matter Of Maine State Tort Law.

Even a cursory reading of the Law Court's opinion shows that no issue of federal statutory or Constitutional law was decided in this case. In its opinion, the Law

Court does not even cite a federal statute or Constitutional provision.

The decision instead involves solely issues of Maine contract and tort law. Colford's cross-appeal presented the issue of whether the trial court's entry of a judgment as a matter of law on his intentional infliction of emotional distress claim was erroneous. After considering all of the evidence Colford offered of Chubb's alleged tortious acts, the Law Court affirmed this judgment finding it "without error and within [the trial court's] discretion." *Colford*, 687 A.2d at 617. As quoted above, the Law Court found that Chubb's allegedly tortious acts did not rise to "the level of extreme and outrageous, or exceed all possible bounds of decency" so as to be actionable as a matter of Maine common law. *Id.*

The Law Court is undisputably the final arbiter both of Maine tort law generally and of what conduct is "so outrageous and extreme" as to be actionable under the tort of intentional infliction of emotional distress under Maine law specifically. *See West v. American Tele. & Tele. Co.*, 311 U.S. 223, 236 (1940) ("[T]he highest court of the state is the final arbiter of what is state law. When it has spoken, its pronouncement is to be accepted by federal courts as defining state law. . . . "). Colford concedes as much in his Petition. Petition 11.

II. The "Inadequate State Ground" Exception Provides No Basis To The Court To Review This State Law Decision.

To overcome the obvious shortcoming that this case involves no federal claim, but rather is simply a matter of

Maine State law, Colford seeks refuge in the narrow "inadequate state ground" exception to the bar against reviewing State law decisions. Relying principally on the decision in *Howlett v. Rose*, 496 U.S. 356 (1990), Colford argues that the Law Court, out of confusion, ignorance or possibly worse motives, improperly avoided the "complex calibration of remittitur" required by *BMW of North America, Inc. v. Gore*, 517 U.S. ___, 134 L.Ed. 2d 809 (1996), by deciding this case on an inadequate state law ground. Petition 11-12. Colford asserts that the Law Court's judgment that Colford failed to prove his intentional infliction of emotional distress claim lacked "substantial support in Maine law." Petition 9. For the following reasons, this argument is wrong and does not provide the basis for a writ of certiorari.

A. The *Howlett* line of cases provides no basis for jurisdiction.

1. The *Howlett* line of cases involves the use of state law to defeat the assertion of a federal right.

The *Howlett* decision and the other "inadequate state ground" cases cited by Colford provide no basis for jurisdiction and are distinguishable on their face. *Howlett* and its predecessors were all cases in which a state law decision prevented the assertion of a federal right by the party seeking review of the state law decision – a factor not present here. In *Howlett*, for example, the plaintiff asserted a section 1983 claim based on alleged violations of his rights under the Fourth and Fourteenth Amendments against illegal searches. The Florida state courts dismissed this federal claim on the grounds that Florida's

statutory waiver of sovereign immunity did not apply to section 1983 claims brought in Florida state court. This Court granted certiorari out of "concern that the state court may be evading federal law and discriminating against federal causes of action." *Id.* at 366. The necessary predicate to establishing "inadequate state ground" jurisdiction, thus, is demonstrating that the state ground has been used to prevent the party asserting a federal right from doing so. *Id.* at 366-67 & n.14 ("The reasons for [this] rule rest on nothing less than this Court's ultimate authority to review state-court decisions in which 'any title, right, privilege, or immunity is specially set up or claimed under the Constitution.'") (quoting 28 U.S.C. § 1257(a)). *See also* Herbert Wechsler, *The Appellate Jurisdiction of the Supreme Court: Reflections on the Law and the Logistics of Direct Review*, 34 Wash. & Lee L. Rev. 1043, 1052 (1977) (In cases where "the existence or the application of a *federal right* turns on a logically antecedent finding on a matter of state law, it is essential to the Court's performance of its function that it exercise an ancillary jurisdiction to consider the state question.") (emphasis added); Alfred Hill, *The Inadequate State Ground*, 65 Columbia L. Rev. 943, 998 (1965) (state ground reviewable only when it directly violates federal law or "stands in the way of an independent federal claim"). Colford concedes as much in his Petition. *See* Petition 13-14 (The inadequate state law exception "is narrow because it comprises only cases that present a federal claim whose existence or application turns on a question of State law.").

2. In *See*king punitive damages, Colford asserted no federal right.

Colford's claim for punitive damages was not a federal claim. His right to the remedy of punitive damages is a matter of state tort law. *See Tuttle v. Raymond*, 494 A.2d 1353, 1361 (Me. 1985). There is no federal Constitutional or statutory right to receive punitive damages in an action based on state tort law. It is perfectly within the right and authority of the Maine legislature and judiciary to do away with punitive damages in their entirety if they so choose, as at least one other state has done. *See* N.H. Rev. Stat. Ann. § 507:16 (1994) (prohibiting punitive damages altogether, unless explicitly provided by statute); *see also BMW*, 134 L.Ed. 2d at 822 (indicating that those states that "authorize exemplary damages" "have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases.").

The assertion of a right under the Due Process Clause of the Fourteenth Amendment comes into play with respect to punitive damages only from the defendant's point of view. The Due Process Clause provides the defendant against whom the punitive damages award has been entered protection from a "grossly excessive" penalty. *BMW*, 134 L.Ed. 2d at 818. As one of its arguments against the punitive damages award, Chubb raised this constitutional limitation. Neither the trial court in the post-trial phase nor the Law Court on appeal, however, had to consider this alternative, federal defense because the underlying intentional infliction claim failed as a matter of law.

That this potential Constitutional law defense existed for Chubb does not create a Constitutional right in Colford. Nor does the fact that the Law Court did not have to address this defense because Colford's claim failed as a matter of law provide a compelling reason for the Court to grant certiorari here. Taken to its logical conclusion, Colford's argument would suggest that in every case in which a party has a potential Constitutional defense, including every case in which punitive damages are sought, this Court would have jurisdiction to review all defense verdicts, regardless of whether the Constitutional defense played any role in the decision.

B. The Maine Law Court's decision is fairly and substantially supported by existing Maine precedent.

In any event, even if the *Howlett* line of cases did apply to this case on account of the mere existence of Chubb's Due Process defense to the punitive damages award, the Law Court's decision has more than adequate support in the factual record and under its intentional infliction of emotional distress precedent. Colford summarizes several of the Law Court's intentional infliction cases to suggest that its decision here is without support. Colford's summary shows that the "extreme and outrageous" standard for conduct to be actionable in tort in Maine is very high. The summary also shows that the Law Court has developed a body of law demarcating the line between what conduct is sufficiently outrageous to be actionable and what conduct is not. Great deference, accordingly, must be shown to the Law Court which

made this public policy determination on behalf of the State of Maine.

Colford's summary also highlights the importance of the trial court's role in determining whether particular conduct is sufficiently outrageous to be actionable. Maine law is clear that the determination in the first instance of whether conduct is sufficiently outrageous is a legal issue for the trial court. *Rubin v. Matthews Int'l Corp.*, 503 A.2d 694, 699 (Me. 1986). The trial court, which actually sees the witnesses and hears the evidence firsthand, is uniquely qualified to make this threshold determination.

Here, the trial court after carefully considering all of the evidence presented supporting Colford's tort claim concluded that Chubb's conduct did not rise to the level of conduct actionable for the infliction of emotional distress. A. 23a. The Law Court then considered this case, in the light of its developed case law on what conduct is sufficiently outrageous so as to be actionable, and concluded that Chubb's conduct did not reach that line.

We submit that the factual record and the Law Court's precedent fairly and substantially support this conclusion. Chubb's conduct fairly can be viewed to not have been so "extreme and outrageous" as to be actionable in light of the Law Court's other rulings in intentional infliction cases. This is particularly so in light of the fact that all of the acts about which Colford complains were done by Chubb to exercise contractual rights or to defend itself in this litigation. *See Chiapetta v. Lumbermens Mutual Ins. Co.*, 583 A.2d 198, 201 (Me. 1990) (finding that insurer's "assertions of its policy defenses in a legally permissible way does not render it liable for emotional

distress"). And, Colford oddly seems to agree: As part of his summary, Colford describes the decision in *Gray v. State of Maine*, 624 A.2d 479 (Me. 1993), as "probably the closest case" to the present, even though the Law Court there ruled that a human services caseworker's neglect and misrepresentations in a child protection investigation, which resulted in the plaintiff's son being removed from the plaintiff's care, "was not such extreme and outrageous conduct as to warrant a recovery. . . . " *Id.* at 484.

C. It is the recommended practice in Maine for trial courts in close cases to allow the case to go to the jury and then if the verdict is not supported by sufficient evidence to enter judgment as a matter of law.

Because the trial court originally ruled that sufficient evidence had been presented to warrant submitting the tort claim to the jury, Colford argues repeatedly that the trial court's post-verdict reversal of the judgment was without substantial support. Petition 3, 10 & 15. Maine trial courts, however, routinely reserve judgment on the legal sufficiency of the evidence until after a verdict is returned, thereby avoiding any need for a retrial if the legal determination is later reversed. *See Currier v. Toys 'R' Us, Inc.*, 680 A.2d 453, 455 (Me. 1996); *Bedard v. Pellon*, 606 A.2d 205, 207 (Me. 1992); *Reed v. Rule*, 376 A.2d 445 (Me. 1977); *Moore v. Fenton*, 289 A.2d 698, 700 n.1 (Me. 1972). "[T]he denial of a motion for a judgment as a matter of law and the subsequent grant of a judgment notwithstanding the verdict does not reveal confusion or

waffling on the part of the trial court but, rather, demonstrates a wise use of judicial resources." *Colford*, 681 A.2d at 616 n.11.

III. Colford's Petition Is Based On Several Mischaracterizations And Omissions Of The Record.

In his Petition, Colford mischaracterizes, and in some instances omits, pertinent parts of the record in several important respects. Chubb points out these misstatements to comply with Supreme Court Rule 15(2) and as further support for why the Court should deny Colford's Petition.

First, Colford asserts that by sending Chubb one month's premium prepayment with his application for disability coverage and submitting to a medical examination, he became eligible for temporary insurance coverage under a binder. Petition 4. This is misleading. Colford did not become eligible for temporary insurance simply by making his first premium payment and by submitting to a medical exam. Rather, as the Law Court held, Colford only would have been entitled to temporary insurance under the conditional receipt if he had satisfied the conditions precedent contained therein. *Colford*, 687 A.2d at 615. Because he did not satisfy those objective conditions, he was not entitled to temporary insurance. *Id.* "The fact that the advance premium paid was sufficient and did not constitute the reason why Colford was not acceptable does not convert the conditional receipt into temporary insurance without regard to the conditions." *Id.*

Second, Colford asserts that Chubb's underwriter was aware of Colford's pending claim and that this information influenced its decision not to insure Colford. Petition 5. As set forth in detail in the Statement of the Case above, this assertion is not supported in the record. Colford executed the conditional receipt on April 21, 1991. He injured his back less than two weeks later. Colford did not provide notice of his injury to Chubb until June 4, 1991. During the interim, completely unaware of Colford's injury, Chubb's underwriter determined that Colford did not satisfy the conditions of the conditional receipt and correspondingly on May 20, 1991 sent Colford a letter offering disability coverage with a different scope for which Colford would qualify.

Third, Colford asserts that he showed that Chubb Securities Corp. falsely informed the SEC that Colford wished to voluntarily terminate his registration as a licensed securities broker. Petition 5. Later in his Petition, Colford goes further and improperly attributes these statements to Chubb. Petition 10, 17. In his summary of the Law Court's discussion of his intentional infliction claim, Colford also insinuates that the Law Court itself found Chubb to have made false statements. Petition 10. The record does not support these assertions. The Law Court did not label Chubb's conduct with respect to the SEC as "false." *Colford*, 687 A.2d at 617. And, there is no evidence in the record to attribute to Chubb the conduct of Chubb Securities, a separate corporation.

Fourth, while he makes repeated reference to the physical symptoms he attributes to Chubb's conduct, *see* Petition 6, 18, Colford omits any reference to the fact that

he and his attorney during trial attributed these symptoms to Chubb's failure to pay disability benefits, not Chubb's other alleged conduct. Maine law is clear that there is no tort for the bad faith failure to pay insurance benefits, which would allow for the recovery of physical and emotional distress damages. *Marquis v. Farm Family Mutual Ins. Co.*, 628 A.2d 644, 652 (Me. 1993). Because there is no tort of bad faith, the Law Court required Colford to demonstrate that Chubb's purportedly tortious "actions arose independently of its denial of the disability claim." *Colford*, 687 A.2d at 617.

CONCLUSION

For the foregoing reasons, the Court should deny Colford's Petition for Writ of Certiorari.

Respectfully submitted,

WILLIAM J. KAYATTA, JR.
(*Counsel of Record*)
JARED S. DES ROSIERS
PIERCE ATWOOD
One Monument Square
Portland, ME 04101
(207) 791-1100

Attorneys for Respondent Chubb Life Insurance Company of America